

# PROBATE COURT OF \_\_\_\_\_ COUNTY, OHIO

ESTATE OF \_\_\_\_\_

CASE NO. \_\_\_\_\_

## SUMMARY OF GENERAL RIGHTS OF SURVIVING SPOUSE

[R.C. 2106.02]

To: \_\_\_\_\_  
Surviving Spouse

Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

**This is a summary of your rights as surviving spouse under Chapter 2106 of the Revised Code. Many of these rights have specific time limits in which they must be exercised. If you have questions concerning your rights, you should discuss them with an attorney of your choice. The Court cannot advise you.**

### 1. Election to Take Under or Against the Will (R.C. 2106.01 – 2106.08)

If you elect to take against the Will, you are entitled to one-half of decedent's net estate, unless there are two or more of decedent's children or their lineal descendants surviving, in which case you are entitled to one-third of decedent's net estate. You will not be entitled to receive any assets given to you pursuant to the Will.

If you elect to take under the Will, you will receive those assets given to you under the Will.

Whichever choice you make, (unless you elect to take under the Will and the Will specifically precludes you from these rights) you will not be barred from your rights to purchase certain assets at the appraised value, to remain in the family home for one year, to receive an allowance for support, to receive not more than two automobiles and one boat and motor owned by decedent, and such rights as a surviving spouse may be entitled under law.

Although your election may not affect certain non-probate property, such as joint and survivorship, payable on death, and transfer on death property, it may have an effect on other types of non-probate property, including property held in trust.

Before making your election, you are entitled to file a complaint in this Court asking that the Will be construed.

If you elect to take under the Will, you may do so in writing if you wish, but you may also do so merely by taking no action.

If you elect to take against the Will, you must do so in person before the Probate Judge or Magistrate. This election must be exercised within five months from the date of the initial appointment of the administrator or executor of the estate or it is forfeited.

### 2. Right to Receive Mansion House (R.C. 2106.10)

Depending upon the value of the real estate, you may have the right to receive the mansion house (the residence) as part of your inheritance.

### 3. Right to Place Charge on Real Estate (R.C. 2106.11)

If there is no will and there are insufficient assets to pay the specific monetary amount due to the surviving spouse pursuant to 2106.05, you have the right to place a charge (lien) on any real estate subject to the probate estate in the amount of the unpaid portion of the specific monetary share.

**4. Allowance for Support (R.C. 2106.13)**

You may be entitled to an allowance for support. For deaths after March 18, 1999 the amount is \$40,000 of probate assets. If there are minor children of the deceased spouse, not the children of the surviving spouse, the court will apportion the allowance among those children and the surviving spouse.

**5. Right to Live in the Mansion House (R.C. 2106.15)**

You have the right to live in the mansion house (the residence), if it is a probate asset, for a period of one year from the date of death without the payment of rent to the estate. If the mansion house is sold to pay debts during this period of time, you may be entitled to the fair rental value of the mansion house.

**6. Right to Purchase Property (R.C. 2106.16)**

You may have the right to purchase assets of the estate at the appraised values. The application or petition to purchase the assets must be filed within one month of the approval of the inventory or the right is forfeited.

**7. Right to Automobiles (R.C. 2106.18)**

You may be entitled to receive up to two automobiles, not specifically bequeathed, that would otherwise be included in the probate estate that do not exceed an aggregate value of \$40,000. This election may affect the amount you may receive under the Allowance for Support. This election must be exercised within five months from the initial appointment of the administrator or executor or the right is forfeited.

**8. Right to Watercraft and Motor (R.C. 2106.19)**

You may be entitled to receive one watercraft and motor that would otherwise be included in the probate estate. This election must be exercised within five months from the initial appointment of the administrator or executor or the right is forfeited.

**9. Right to Reimbursement of Funeral Bill (R.C. 2106.20)**

You may be entitled to be reimbursed for the payment of the funeral bill. If the estate is insolvent, you will receive the same statutory priority as granted to the funeral and burial expenses.

**10. Right to Challenge Antenuptial or Separation Agreement (R.C. 2106.22)**

You are entitled to file an action to declare the validity of an antenuptial or separation agreement. This action must be filed within four months of the appointment of the executor or administrator.

**This is a summary of your general rights. There may be additional rights to which you are entitled.**

**Ohio Revised Code §2106.25 states:**

Unless otherwise specified by a provision of the Revised Code or this section, a surviving spouse shall exercise all rights under Chapter 2106. of the Revised Code within five months of the initial appointment of an executor or administrator of the estate. It is conclusively presumed that a surviving spouse has waived any right not exercised within that five-month period or within any longer period of time allowed by the court pursuant to this section. Upon the filing of a motion to extend the time for exercising a right under Chapter 2106 of the Revised Code and for good cause shown, the court may allow further time for exercising the right that is the subject of the motion.